

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT  
MACOUPIN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN, Attorney  
General of the State of Illinois,

Plaintiff,

-vs-

FRAGRANT 40, LLC, an Illinois  
limited liability corporation,

Defendant.

No. 11-CH-137

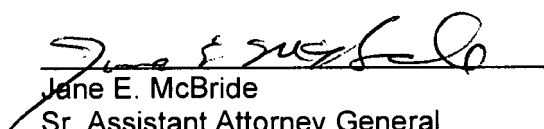
CERTIFICATE OF SERVICE OF DISCOVERY

I hereby certify that I did on January 30, 2012, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, and by electronic transfer a true and correct copy of the following discovery document:

1. RESPONSE TO DEFENDANTS REQUESTS TO ADMIT DIRECTED TO ATTORNEY GENERAL FOR THE PEOPLE OF THE STATE OF ILLINOIS

addressed to:

Peter E. Naylor  
Claire A. Manning  
Brown, Hay & Stephens, LLC  
205 S. Fifth St., Ste. 700  
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Springfield, IL 62705-2459

  
Jane E. McBride  
Sr. Assistant Attorney General  
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500 South Second Street  
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MACOUPIN COUNTY, ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN, Attorney  
General of the State of Illinois

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**RESPONSE TO DEFENDANTS REQUESTS TO ADMIT DIRECTED TO ATTORNEY  
GENERAL FOR THE PEOPLE OF THE STATE OF ILLINOIS**

NOW COMES Plaintiff, People of the State of Illinois, ex rel Lisa Madigan, Attorney General of the State of Illinois, and responds to Defendant's Requests to Admit Directed to Plaintiff, the State of Illinois, as follows:

**Request No. 1**

1, On February 18, 2009, David Ginder, Environmental Protection Engineer for the Illinois Environmental Protection Agency, conducted a site visit at the Fragrant 40 facility and did not observe any odor violations of the Illinois Environmental Protection Act or the Rules and Regulations of the Illinois Pollution Control Board.

**Response to Request No. 1.**

**Objection:** A Request to Admit may seek admittance of any relevant fact, but not a conclusion of law. *P.R.S. Int'l Inc. V. Shred Pax Corp*, 184 Ill.2d 224, at 226 (1998). Whether a party owes a duty or whether a party's conduct breached a duty are questions of law and are not appropriate for a Request o Admit. *Moy v. Ng*, 371 Ill.App.3d 957, 961 (1<sup>st</sup> Dist. 2007). A

party's action or omission while driving a car is a question of fact; whether that action or omission violated a statute is a question of law. *Robertson v. Sky Chefs, Inc.* 344 Ill. App. 3d 196, 202 (1<sup>st</sup> Dist. 2003). Defendant's request asks whether the inspector did not observe any odor violations of the Illinois Environmental Protection Act or the rules and regulations of the Illinois Pollution Control Board. Plaintiff objects to the portion of Request No. 1 that is a question of law.

**Response:** Plaintiff ADMITS that David Ginder and Don Correll conducted a site visit at the Fragrant 40 facility on February 18, 2009, approximately between the hours of 10:00 A.M. and 12:00 Noon.

**Request No. 2**

2. On February 23, 2009, David Ginder conducted a site visit at the Fragrant 40 facility and did not observe any odor violations of the Illinois Environmental Protection Act or the Rules and Regulations of the Illinois Pollution Control Board.

**Response to Request No. 2.**

**Objection:** Defendant's request asks whether the inspector did not observe any odor violations of the Illinois Environmental Protection Act or the rules and regulations of the Illinois Pollution Control Board. Plaintiff objects to the portion of Request No. 2 that is a question of law.

**Response:** DENIED.

**Request No. 3**

3. On February 25, 2009, David Ginder conducted a site visit at the Fragrant 40 facility and did not observe any odor violations of the Illinois Environmental Protection Act or the Rules and Regulations of the Illinois Pollution Control Board.

**Response to Request No. 3.**

**Objection:** Defendant's request asks whether the inspector did not observe any odor violations of the Illinois Environmental Protection Act or the rules and regulations of the Illinois Pollution Control Board. Plaintiff objects to the portion of Request No. 3 that is a question of law.

**Response:** Plaintiff ADMITS that "odor observations were completed" by David Ginder relevant to the Fragrant 40 facility on February 25, 2009.

**Request No. 4**

4. On October 28, 2009, David Ginder conducted a site visit at which time he noted moderate odor that was at a level that one would expect to find at a facility of this size and not at a level considered a nuisance.

**Response to Request No. 4.**

**Objection:** Defendant's request asks whether the inspector made an observation as to odor that was not at a level considered a nuisance. Whether or not an odor is a nuisance is a legal conclusion. Plaintiff objects to the portion of Request No. 3 that is a question of law.

**Response:** Plaintiff ADMITS that David Ginder conducted a site visit at the Fragrant 40 facility on October 28, 2009.

**Request No. 5**

5. On November 2, 2009, David Ginder conducted a site visit at which time he made no notations regarding odor.

**Response to Request No. 5.**

**Response.** Plaintiff ADMITS that David Ginder conducted a site visit at the Fragrant 40 facility on November 2, 2009. Plaintiff DENIES that David Ginder made no notations regarding odor.

**Request No. 6**

6. On November 18, 2009, David Ginder conducted a site visit at which time he made no notations regarding odor.

**Response to Request No. 6**

**Response.** Plaintiff ADMITS that David Ginder conducted a site visit at the Fragrant 40 facility on November 18, 2009. Plaintiff DENIES that David Ginder made no notations regarding odor.

**Request No. 7**

7. On November 23, 2009, David Ginder conducted a site visit at which time he made no notations regarding odor.

**Response to Request No. 7**

**Response.** Plaintiff ADMITS that David Ginder conducted a site visit at the Fragrant 40 facility on November 23, 2009. Plaintiff DENIES that David Ginder made no notations regarding odor.

**Request No. 8**

8. On December 23, 2009, David Ginder conducted a site visit and noted that the odor observed was not at a level to be considered a nuisance.

**Response to Request No. 8.**

**Objection:** Defendant's request asks whether the inspector made an observation as to odor that was not at a level considered a nuisance. Whether or not an odor is a nuisance is a legal conclusion. Plaintiff objects to the portion of Request No. 8 that is a question of law.

**Response.** DENIED.

**Request No. 9**

9. On December 24, 2009, David Ginder conducted a site visit and noted that the odor was moderate, i.e. a "4" or "5" on a scale of "1-10," with "1" being odor barely detected, and "10" being very strong odor.

**Response to Request No. 9.**

**Response.** Plaintiff ADMITS that on December 24, 2009, David Ginder conducted a site visit and noted that the odor was moderate, i.e. a "4" or "5" on a scale of "1-10," with "1" being odor barely detected, and "10" being very strong odor.

**Request No. 10**

10. On January 22, 2010, David Ginder conducted a site visit at which time he made no notations regarding odor.

**Response to Request No. 10**

**Response:** Plaintiff ADMITS that David Ginder conducted a site visit at the Fragrant 40 facility on January 22, 2010. Plaintiff DENIES that David Ginder made no notations regarding odor.

**Request No. 11**

11. On March 19, 2010, David Ginder and USEPA inspectors Cheryl Burdett and Joan Rogers conducted a site visit, at which time they were of the opinion that the odor experienced during the site visit was mild and less than one would expect for a facility the size of Fragrant 40.

**Response to Request No. 11**

**Response.** Plaintiff ADMITS that on March 19, 2010, David Ginder and USEPA inspectors Cheryl Burdett and Joan Rogers conducted a site visit. Plaintiff ADMITS that Mr. Ginder wrote in his report that "It was the opinion of the US EPA inspectors that the odor that was experienced during the site visit was mild and less than one would expect for a facility of the size of Fragrant 40." Plaintiff ADMITS that Ms. Burdett and Ms. Rogers indicated the odor was mild when Mr. Ginder asked them for their evaluation of the odor. Their observation pertained to the odor present at the time he asked and at the location at the facility where the discussion took place. Ms. Burdett indicates that the location was an area a distance from the production area at the facility in the direction of Joe Clark's home. Plaintiff DENIES that Ms. Rogers made the second part of the statement, that being "and less than one would expect for a facility of the size of Fragrant 40". Ms. Rogers indicates she neither stated the second part of the statement nor did she hear anyone else state it, nor did she observe Mr. Ginder taking notes

at the time of the discussion. Plaintiff neither admits nor denies that Ms. Burdett made the second part of the statement, that being "and less than one would expect for a facility of the size of Fragrant 40". Ms. Burdett does not have recollection of stating the second part of the statement. Ms. Burdett indicates her statement that the odor was mild was with regard to her observation at the time and location when asked for her evaluation by David Ginder. Ms. Burdett indicates that at the time of the site visit when she moved to the barns the odor caused her to "basically gag".

**Request No. 12**

12. On April 14, 2010, David Ginder conducted a site visit at which time there was no detection of swine waste odor.

**Response to Request No. 12**

**Response.** Plaintiff ADMITS that David Ginder conducted a site visit at the Fragrant 40 facility on April 14, 2010. Plaintiff DENIES that David Ginder made no detection of swine waste odor.

**Request No. 13**

13. On April 23, 2010, David Ginder conducted a site visit at which time there was no detection of swine waste odor.

**Response to Request No. 13**

**Response.** Plaintiff ADMITS that David Ginder conducted a site visit at the Fragrant 40 facility on April 23, 2010. Plaintiff DENIES that David Ginder made no detection of swine waste odor.

**Request No. 14**

14. At no point in time has any inspector from the Illinois Environmental Protection Agency found there to be odor at the swine facility exceeding acceptable amounts.

**Response No. 14**

**Objection:** If Defendant's use of the term "exceeding acceptable amounts" is intended to mean odor violation of the Illinois Environmental Protection Act or the rules and regulations of the Illinois Pollution Control Board or to qualify as a nuisance, Plaintiff objects to Request No. 14 as a request solely concerning a question of law.

**Objection.** If the term "exceeding acceptable amounts" is interpreted not to have a legal connotation but rather the reference is a matter of common usage, Plaintiff objects on the basis that the request is vague.

**Response:** DENIED.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN,  
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

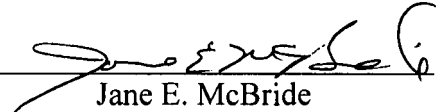
BY: 

JANE E. MCBRIDE  
Environmental Bureau  
Senior Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: January 30, 2012

### VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

  
Jane E. McBride